

AMENDED IN SENATE APRIL 12, 2005

AMENDED IN SENATE MARCH 29, 2005

**SENATE BILL**

**No. 421**

**Introduced by Senator Simitian**

February 17, 2005

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An act to ~~amend Section 25354.5 of~~ add Section 25354.6 to the Health and Safety Code, relating to hazardous substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 421, as amended, Simitian. Hazardous substances: methamphetamine labs: funding.

*Existing law requires the Department of Toxic Substances Control to take removal actions with respect to a hazardous substance that is an illegal controlled substance, a precursor of a controlled substance, or a material intended to be used in the unlawful manufacture of controlled substances, and the department is authorized to expend funds appropriated from the Illegal Drug Lab Cleanup Account in the General Fund for this purpose. Existing law requires the account to be funded by moneys appropriated directly from the General Fund.*

*This bill would establish a procedure to determine the annual cost for taking removal and remedial actions to clean up drug lab waste, as defined, by requiring the development of an annual work plan and cost estimate. The bill would require the department, by September 1, 2006, and every September 1 annually thereafter, to set the amount of a fee upon the first sale of pseudoephedrine in this state at an amount sufficient to fund the annual work plan, but not more than a specified amount.*

*The bill would require the State Board of Equalization to collect a fee, commencing January 1, 2007, upon the first sale of pseudoephedrine by a manufacturer in this state, in the amount*

*determined by the department. The bill would require the fee revenues to be deposited in the Illegal Drug Lab Cleanup Subaccount, which the bill would create in the Toxic Substances Control Account in the General Fund. The bill would authorize the department to expend the funds in the subaccount, upon appropriation by the Legislature, to take removal and remedial actions to clean up drug lab waste. The bill would authorize the department to expend those funds by entering into a contract with a city or county to take or oversee removal or remedial actions to clean up drug lab waste.*

~~Existing law requires the Department of Toxic Substances Control to take removal actions with respect to a hazardous substance that is an illegal controlled substance, a precursor of a controlled substance, or a material intended to be used in the unlawful manufacture of controlled substances, and the department is authorized to expend funds appropriated from the Illegal Drug Lab Cleanup Account in the General Fund for this purpose. Existing law requires the account to be funded by moneys appropriated directly from the General Fund.~~

~~This bill would establish a procedure to determine the annual cost of the department for taking these removal actions, by requiring the development of an annual work plan and cost estimate. The bill would require the department, by September 1, 2006, and every September 1 annually thereafter, to set the amount of a fee upon the first sale of pseudoephedrine in this state at an amount sufficient to fund the annual work plan.~~

~~The bill would require the State Board of Equalization to collect a fee, commencing January 1, 2007, upon the first sale of pseudoephedrine in this state, in the amount determined by the department. The bill would require the fee revenues to be deposited in the Illegal Drug Cleanup Lab Account, for expenditure to take those removal actions. The bill would delete the requirement that the account be funded by moneys appropriated directly from the General Fund.~~

~~By imposing a new tax, this bill would result in a change in state taxes for the purpose of increasing revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of 2/3 of the membership of each house of the Legislature.~~

~~Vote:  $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.~~

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares all of the following:

(a) Methamphetamine is a powerful and addictive stimulant that affects the central nervous system.

(b) The drug is made in clandestine laboratories with relatively inexpensive over-the-counter ingredients.

(c) The primary ingredient in methamphetamine production is pseudoephedrine, which is found in many over-the-counter cold medicines. It has become the new precursor for making methamphetamine. Criminals have easy access to pseudoephedrine, which has led to a rapid increase in clandestine “kitchen” methamphetamine labs.

(d) If a typical box of pseudoephedrine decongestants contains 24 tablets, a methamphetamine manufacturer would need 29 boxes of tablets to make an ounce of methamphetamine.

~~(e) Other chemicals utilized in methamphetamine production include toxic substances, such as lye, muriatic acid, acetone, and red phosphorous. A home methamphetamine maker’s “shopping list” for those chemicals would typically include drain opener, driveway cleaner, paint thinner, and match heads.~~

~~(f) The chemicals specified in subdivisions (e) and (e) are~~  
(e) *The chemicals specified in subdivision (c) are* harmful if ingested, inhaled or absorbed through the skin. In Arizona, police frequently charge methamphetamine makers with felony child abuse if any minors are in the home where manufacturing is taking place.

~~(g) The chemicals specified in subdivisions (e) and (e) can~~

(f) *The chemicals specified in subdivision (c) can* contaminate structural materials, furnishings, wastewater systems, and soils.

~~(h)~~

(g) Chemicals found in methamphetamine labs can cause cancer, short-term and permanent brain damage, developmental and growth problems in children and teens, reproductive system toxicity, internal and external chemical burns, immune system problems, heart problems, and respiratory system problems. Young children breathe and develop faster than adults and therefore can be much more susceptible to the chemicals used to manufacture methamphetamine.

1 ~~(i)~~

2 (h) Methamphetamine labs can be set up in almost any  
3 location, including a motel, house, apartment, storage unit,  
4 vehicle, kitchen, or barn, using instructions that are easily  
5 available on the Internet. If methamphetamine is cooked within a  
6 building, the chemicals from the cooking process are conducted  
7 and spread throughout the entire building.

8 ~~(j)~~

9 (i) The Department of Toxic Substances Control has  
10 completed emergency cleanups of over 15,000 methamphetamine  
11 labs in the past 10 years. Under existing law, the gross removal  
12 of an illegal drug lab is the emergency cleanup of a hazardous  
13 substance that poses an immediate threat to public health or  
14 safety. The Department of Toxic Substances Control is  
15 responsible for this portion of the cleanup, which is paid for  
16 using General Fund moneys.

17 ~~(k)~~

18 (j) The deep-cleaning or remedial action of a  
19 methamphetamine lab is the responsibility of local health and  
20 human services departments, environmental health divisions,  
21 hazardous materials divisions, or fire departments. The local  
22 agency issues a notice to the property owner to clean up the  
23 property, but the standard for cleanup of those labs varies from  
24 local agency to local agency and from property owner to property  
25 owner.

26 ~~(l)~~

27 (k) Existing law places the ultimate responsibility for the  
28 remedial cleanup of a former methamphetamine lab in the hands  
29 of the property owner.

30 (l) *The Legislature declares that the imposition of a fee upon*  
31 *the sale of pseudoephedrine by this act would not result in the*  
32 *imposition of a tax within the meaning of Article XIII A of the*  
33 *California Constitution, because the amount and nature of the*  
34 *fee has a fair and reasonable relationship to the adverse*  
35 *environmental burdens imposed by the disposal of*  
36 *pseudoephedrine at methamphetamine labs and there is a*  
37 *sufficient nexus between the fee imposed and the use of those fees*  
38 *to support the cleanup of drug lab waste at methamphetamine*  
39 *lab sites.*

1     ~~SEC. 2. Section 25354.5 of the Health and Safety Code is~~  
2     ~~amended to read:~~

3     ~~25354.5. (a) Any state or local law enforcement officer or~~  
4     ~~investigator or other law enforcement agency employee who, in~~  
5     ~~the course of an official investigation or enforcement action~~  
6     ~~regarding the manufacture of any illegal controlled substance,~~  
7     ~~comes in contact with, or is aware of, the presence of a substance~~  
8     ~~that the person suspects is a hazardous substance at a site where~~  
9     ~~an illegal controlled substance is or was manufactured, shall~~  
10    ~~notify the department for the purpose of taking removal action, as~~  
11    ~~necessary, to prevent, minimize, or mitigate damage that might~~  
12    ~~otherwise result from the release or threatened release of the~~  
13    ~~hazardous substance, except for samples required under Section~~  
14    ~~11479.5 to be kept for evidentiary purposes.~~

15    ~~(b) (1) Notwithstanding any other provision of law, upon~~  
16    ~~receipt of a notification pursuant to subdivision (a), the~~  
17    ~~department shall take removal action, as necessary, with respect~~  
18    ~~to any hazardous substance that is an illegal controlled substance,~~  
19    ~~a precursor of a controlled substance, a material intended to be~~  
20    ~~used in the unlawful manufacture of a controlled substance and~~  
21    ~~any container for such a material, a waste material from the~~  
22    ~~unlawful manufacture of a controlled substance, or any other~~  
23    ~~item contaminated with a hazardous substance used or intended~~  
24    ~~to be used in the manufacture of a controlled substance. The~~  
25    ~~department may expend funds appropriated from the Illegal Drug~~  
26    ~~Lab Cleanup Account created pursuant to subdivision (c) to pay~~  
27    ~~the costs of removal actions required by this section. The~~  
28    ~~department may enter into oral contracts, not to exceed ten~~  
29    ~~thousand dollars (\$10,000) in obligation, when, in the judgment~~  
30    ~~of the department, immediate corrective action with respect to a~~  
31    ~~hazardous substance subject to this section is necessary to~~  
32    ~~remedy or prevent an emergency.~~

33    ~~(2) The department shall, as soon as the information is~~  
34    ~~available, report the location of any removal action that will be~~  
35    ~~carried out pursuant to paragraph (1), and the time that the~~  
36    ~~removal action will be carried out, to the local environmental~~  
37    ~~health officer within whose jurisdiction the removal action will~~  
38    ~~take place, if the local environmental officer does both of the~~  
39    ~~following:~~

~~(A) Requests, in writing, that the department report this information to the local environmental health officer.~~

~~(B) Provides the department with a single 24-hour telephone number to which the information can be reported.~~

~~(e) (1) For purposes of Chapter 6.5 (commencing with Section 25100) or this chapter, any person who is found to have operated a site for the purpose of manufacturing an illegal controlled substance or a precursor of an illegal controlled substance is the generator of any hazardous substance at, or released from, the site that is subject to removal action pursuant to this section.~~

~~(2) During the removal action, for purposes of complying with the manifest requirements in Section 25160, the department, the county health department, the local environmental health officer, or their designee may sign the hazardous waste manifest as the generator of the hazardous waste. In carrying out that action, the department, the county health department, the local environmental health officer, or their designee shall be considered to have acted in furtherance of their statutory responsibilities to protect the public health and safety and the environment from the release, or threatened release, of hazardous substances, and the department, the county health department, the local environmental health officer, or their designee are not responsible parties for the release or threatened release of the hazardous substances.~~

~~(3) The officer, investigator, or agency employee specified in subdivision (a) is not a responsible party for the release or threatened release of any hazardous substances at, or released from, the site.~~

~~(d) The department may adopt regulations to implement this section in consultation with appropriate law enforcement and local environmental agencies.~~

~~(e) The Illegal Drug Lab Cleanup Account is hereby created in the General Fund and the department may expend any money in the account, upon appropriation by the Legislature, to carry out the removal actions required by this section.~~

~~(f) The responsibilities assigned to the department by this section apply only to the extent that sufficient funding is made available for that purpose.~~

1     ~~(g) (1) The following procedure shall be used to determine the~~  
2     ~~annual cost for the department to take removal actions pursuant~~  
3     ~~to this section, with respect to any hazardous substance that is an~~  
4     ~~illegal controlled substance, a precursor of a controlled~~  
5     ~~substance, a material intended to be used in the unlawful~~  
6     ~~manufacture of a controlled substance and any container for such~~  
7     ~~a material, a waste material from the unlawful manufacture of a~~  
8     ~~controlled substance, or any other item contaminated with a~~  
9     ~~hazardous substance used or intended to be used in the~~  
10    ~~manufacture of a controlled substance.~~

11    ~~(A) On or before March 1, 2006, and on or before March 1~~  
12    ~~annually thereafter, the department shall submit to the~~  
13    ~~Department of Finance an annual work plan for taking removal~~  
14    ~~action pursuant to this section, including the estimated costs that~~  
15    ~~the department will incur to complete that work plan. In~~  
16    ~~determining the annual cost of completing the work plan, no~~  
17    ~~more than 3 percent of the annual cost shall include the~~  
18    ~~department's costs for overhead and administration.~~

19    ~~(B) On or before April 1, 2006, and on or before April 1~~  
20    ~~annually thereafter, the Department of Finance shall certify that~~  
21    ~~the proposed work plan is feasible and that the estimated cost for~~  
22    ~~completing the work plan is within 25 percent of the estimate~~  
23    ~~determined by the Department of Finance to complete the annual~~  
24    ~~work plan.~~

25    ~~(C) If the Department of Finance does not certify the~~  
26    ~~department's proposed work plan and the cost estimate pursuant~~  
27    ~~to subparagraph (B), the Department of Finance and the~~  
28    ~~department shall meet and confer and produce a final work plan~~  
29    ~~and cost estimate on or before the subsequent May 1 after that~~  
30    ~~decision not to certify the work plan and cost estimate.~~

31    ~~(D) If, after conducting a meeting pursuant to subparagraph~~  
32    ~~(C), the Director of Finance and the director do not agree on the~~  
33    ~~work plan and cost estimate, the Governor shall submit a work~~  
34    ~~plan and cost estimate to the department on or before the~~  
35    ~~subsequent May 15.~~

36    ~~(2) (A) On or before September 1, 2006, and September 1~~  
37    ~~annually thereafter, the department shall set the amount of a fee~~  
38    ~~upon the first sale of pseudoephedrine in this state at an amount~~  
39    ~~sufficient to fund the annual work plan developed pursuant to~~  
40    ~~paragraph (1).~~

~~(B) Commencing January 1, 2007, the State Board of Equalization shall collect a fee upon the first sale of pseudoephedrine in this state, in the amount determined pursuant to subparagraph (A). The fee revenues shall be deposited in the Illegal Drug Cleanup Lab Account, for expenditure pursuant to this section.~~

*SEC. 2. Section 25354.6 is added to the Health and Safety Code, to read:*

*25354.6. (a) For purposes of this section, the following definitions shall apply:*

*(1) "Drug lab waste" means the contamination resulting from the use of pseudoephedrine in the unlawful manufacture of a controlled substance.*

*(2) "Manufacturer" means a person who manufactures pseudoephedrine sold in this state*

*(b) (1) On or before September 1, 2006, and on or before September 1 annually thereafter, the department shall set the amount of a fee upon the first sale of pseudoephedrine in this state at an amount sufficient to fund the annual work plan developed pursuant to subdivision (d), but in an amount not more than .00232 cents (\$.000232) per milligram of pseudoephedrine.*

*(2) Commencing January 1, 2007, the State Board of Equalization shall collect a fee upon the first sale of pseudoephedrine by a manufacturer in this state, in the amount determined pursuant to paragraph (1). The fee revenues shall be deposited in the Illegal Drug Lab Cleanup Subaccount, which is hereby created in the Toxic Substances Control Account in the General Fund, for expenditure pursuant to this section.*

*(c) The department may expend the funds in the Illegal Drug Lab Cleanup Subaccount, upon appropriation by the Legislature, to take removal and remedial actions to clean up drug lab waste. The department may expend those funds by entering into a contract with a city or county to take or oversee removal or remedial actions to clean up drug lab waste pursuant to this section.*

*(d) The following procedure shall be used to determine the annual cost for the department to take removal or remedial actions to clean up drug lab waste pursuant to this section:*



1     *(1) On or before March 1, 2006, and on or before March 1*  
2     *annually thereafter, the department shall submit to the*  
3     *Department of Finance an annual work plan for taking removal*  
4     *or remedial action to clean up drug lab waste, including the*  
5     *estimated costs to complete that work plan. In determining the*  
6     *annual cost of implementing the work plan, no more than 3*  
7     *percent of the annual cost shall include the department's costs for*  
8     *overhead and administration.*

9     *(2) On or before April 1, 2006, and on or before April 1*  
10    *annually thereafter, the Department of Finance shall certify that*  
11    *the proposed work plan is feasible and that the estimated cost for*  
12    *implementing the work plan is within 25 percent of the estimate*  
13    *determined by the Department of Finance to implement the*  
14    *annual work plan.*

15    *(3) If the Department of Finance does not certify the*  
16    *department's proposed work plan and the cost estimate pursuant*  
17    *to paragraph (2), the Department of Finance and the department*  
18    *shall meet and confer and produce a final work plan and cost*  
19    *estimate on or before the subsequent May 1 after that decision*  
20    *not to certify the work plan and cost estimate.*

21    *(4) If, after conducting a meeting pursuant to paragraph (3),*  
22    *the Director of Finance and the director do not agree on the*  
23    *work plan and cost estimate, the Governor shall submit a work*  
24    *plan and cost estimate to the department on or before the*  
25    *subsequent May 15.*